IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMOs No. 170, 171 and 172 of 2004

Date of Decision: 10th November,2006

CMPMO No.170 of 2004
Jai Parkash Hydro Power Ltd. Vs. Occhu Ram and another
CMPMO No.171 of 2004
Jai Parkash Hydro Power Ltd. Vs.Inder Singh and another
CMPMO No.172 of 2004
Jai Parkash Hydro Power Ltd. Vs. Shiv Shanker Thakur and another

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Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

CMPMO No.170 of 2004

For the petitioner: Mr.Bhupender Gupta, Senior Advocate, with Mr.Neeraj Gupta, Advocate.

For the respondent: Mr.Pankaj Sharma, Advocate, vice Mr. Sandeep Kaushik, Advocate, for respondent No.1.
Mr.Raman Sethi, Advocate, for respondent No.2.

CMPMOs No.171, 172 of 2004

For the petitioner: Mr.Bhupender Gupta, Sr. Advocate, with Mr.Neeraj Gupta, Advocate.

For the respondent: Mr.G.D.Verma, Sr. Advocate, with Mr.B.C.Verma, Advocate, for respondent No.1.
Mr.Raman Sethi, Advocate, for respondent No.2.

V.K.Gupta, C.J. (Oral)

By this common order, all the three petitions are being disposed of together.

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

The only point of controversy involved for adjudication in these petitions, all filed under Article 227 of the Constitution of India, relates to the ouster of jurisdiction of a Civil Court as was claimed by the petitioner in the Civil Suits filed by respondent No.1 against the petitioner and respondent No.2. Brief facts first.

Respondent No.1 filed a suit for claiming damages and compensation against the petitioner and respondent No.2 on the ground that while laying transmission lines and erection of other structures, damage was caused to the property, moveable as well as immoveable of the plaintiff-respondent No.1. Various disputed questions of fact arose in the aforesaid suits, namely, the plaintiff-respondent No.1 asserting the factum of damage suffered by him and claiming a particular sum of money and the petitioner as well as respondent No.2 disputing the factum of damage or the extent of such damage as also disputing and denying its liability to pay the claimed amount of damages and compensation.

In the course of proceedings in the aforesaid suit the defendants raised a preliminary objection with respect to the jurisdiction of the Civil Court to entertain the suit. This objection was based upon and arose out of Section 67 of the Electricity Act, 2003. The defendants placing reliance upon this Section

contended before the learned Civil Court that a combined reading of Section 67 and Section 86 of Electricity Act, 2003 showed that the jurisdiction to receive, entertain and adjudicate upon a claim for damages and compensation vested exclusively in the appropriate Commission constituted under the Act and therefore, the Civil Court's jurisdiction was barred. Reliance was placed upon some provisions of the Electricity Act, 2003. Learned Court below has rejected the aforesaid objection of the petitioner and held that jurisdiction of the Civil Court was not barred.

Mr.Bhupender Gupta, learned Senior Counsel appearing for the petitioner mainly relied upon sub-section (2) of Section 67 of the Electricity Act, 2003, particularly clause (e) thereof as well as sub-sections (3), (4) and (5) of Section 67, in addition to Section 86 of the Act to contend that by necessary implication the jurisdiction of Civil Court was barred because the aforesaid provisions of 2003 Act vested exclusive jurisdiction in the appropriate Commission. He also relied upon Section 173 and Section 174 of the aforesaid Act in support of the aforesaid submission.

The relevant extract (for our purposes) of Section 67 is reproduced hereinbelow. It reads thus:-

> **"67. Provision as to opening up of streets, railways, etc. ……**

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

……

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

……

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute including amount or compensation under sub-section (3) arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section."

Even though Section 67(2)(e) talks of determination as well as payment of compensation and sub-section (3) of Section 67 stipulates that the licensee is liable to make full compensation for any damage suffered. It is sub-section (4) of Section 67, which says that where any dispute or difference arises

with respect to the compensation or the amount of compensation payable under sub-section (3), the matter shall be determined by an appropriate Commission. "Appropriate Commission" has been defined in sub-section (4) of Section 2 of the Act to mean the Central Regulatory Commission or the State Regulatory Commission referred to in Section 82 of the Act. Undoubtedly the Central Regulatory Commission has no role to play in this case.

Section 82 of the Act talks about the constitution of the State Commission. Under Section 86 of the Act the functions of the State Commission have been defined as well as incorporated which inter alia, in clause (a) also stipulates that the State Commission shall discharge such other functions as may be assigned to it under the aforesaid 2003 Act.

The learned Court below by referring to Section 145 as well as Section 175 of the Act has held that a combined reading of these two provisions of law clearly suggests that neither explicitly nor by necessary implication the jurisdiction of the Civil Court with respect to the aforesaid subject matter can be said to have been barred. I fully agree with the aforesaid view.

Undoubtedly Section 145 clearly lays down that no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which an

Assessing Officer referred to in Section 126 or an Appellate Authority referred to in Section 127 or an Adjudicating Officer appointed under the Act is empowered to determine etc. etc. Determination and payment of compensation as occurring in Section 67(2)(e) is not a matter covered by Section 145 of the Act. I fully agree with the view expressed by the learned Court below that if the Legislature intended to bar the jurisdiction of Civil Courts with respect to each and every matter covered under the Act, nothing prevented it from saying so or specifying the same in so many words. By restricting the ouster of jurisdiction of Civil Court in Section 145 only to such matters as have specifically been mentioned in that Section, the Legislature conveyed its clear intention that the jurisdiction of a Civil Court shall be barred only with respect to such matters as are mentioned in Section 145. This apart, reliance has rightly been placed by the learned Court below upon Section 175 of the Act by holding that this Section clearly and unmistakably incorporates a specific provision of law that the provisions of 2003 Act are in addition to and not in derogation of any other law for the time being in force. It, therefore, clearly means that all the provisions of Civil Procedure Code are saved in so far as the application of 2003 Act is concerned. Reliance placed by Mr.Gupta upon Section 173 or Section 174 is of no help to the petitioner because

there is no question of any inconsistency between any provision of the Code of Civil Procedure and 2003 Act.

Apart from the aforesaid grounds and reasons adopted by the learned Court below in rejecting the petitioner's contention about the claimed ouster of jurisdiction, I wish to also point out three very important and vital aspects emerging out of 2003 Act which would go a long way in supplementing the view about the non-ouster of the jurisdiction of a Civil Court.

First and foremost, the operation of sub-section (2) or sub-section (4) of Section 67 is dependent upon the making of Rules by the appropriate Government. It is undisputed that "appropriate Government" in this case, based upon its definition occurring in sub-section (5) of Section 2 of the Act is the State Government. Sub-section (2) of Section 67 clearly stipulates about the appropriate Government making the Rules for specifying the items finding mention in clauses (a) to (p) of this sub-section. Determination and payment of compensation, as noticed above, finds a mention in clause (e). Unless, therefore, the appropriate Government through the medium of the Rules framed by it specifies about the issue and the question of determination and payment of compensation, this provision neither takes effect nor would be considered to be of any relevance or having any

force in law. This provision can take effect only if Rules are framed by the State Government with respect to the issue or the question of determination as well as payment of compensation because only in such statutory Rules (as might be framed) can the State Government specify and lay down the procedure with respect to the adjudicatory process for determination and payment of compensation.

In the absence of a prescribed and laid down procedure for such adjudicatory process, the parties in the air cannot think of approaching the State Commission for determination of compensation. After all, the State Commission by itself cannot determine the compensation unless specific Rules are framed laying down and prescribing a self-contained procedure for the adjudicatory process to be adopted by the State Commission for this purpose. Unless, therefore, the State Government frames the Rules to the aforesaid effect, Section 67(2)(e) nor sub-section (4) of Section 67 can be said to have any effect, if at all. This is one aspect of the matter.

The second, a very important aspect, which cannot be lost sight of is that even though Section 67 does talk of the Commission having the power to determine the extent as well as payment of compensation, no provision of the Act was brought to my notice by Mr. Gupta under which there is any stipulation about the

manner or the method by which an order passed by the Commission for determination as well as payment of compensation can be enforced. No provision of the Act says that such an order passed by the Commission shall have the force of law, or the force of a decree passed by a Court, or that it would be enforced in any given or specified manner. The absence of any provision with regard to the enforcement of an order passed by the Commission crates a vacuum as well as a void with respect to its enforceability. That being the case it is more in the nature of an illusion to contend that the Commission has exclusive jurisdiction at the cost of the jurisdiction of a Civil Court. Viewed thus, it can very appropriately be held that the absence of any provision in 2003 Act with respect to the enforceability of an order passed by the State Commission renders the jurisdiction exercisable by the State Commission, if at all, with respect to the determination or payment of compensation an exercise in futility which is in total contra-distinction to a meaningful jurisdiction exercised as well as exercisable by a Civil Court because under the provisions of the Code of Civil Procedure there is a comprehensive and well-defined methodology for executing, upto the finest and last details, the orders, judgments or decrees passed by a Civil Court.

Another aspect which also cannot be lost sight of is that the orders passed by a State Commission are appealable only before an Appellate Tribunal constituted under Section 110 of the Act. It is a common knowledge that the aforesaid Appellate Tribunal constituted under Section 110 of the Act is a National Tribunal having its Headquarters at Delhi wherefrom it functions. With respect to paltry claims for damages and compensation filed by ordinary, small litigants, their having to go to Delhi all the way to file appeals against the orders of the State Commission, if the State Commission rejects such claims, will be an exercise not foreseen by such ordinary, small litigants. This perhaps would defeat and frustrate the very purpose for which such small, ordinary litigants to prefer their claims against the wrong doers under the law of torts.

For the foregoing reasons, therefore, I have no doubt in my mind that the jurisdiction of the Civil Court in the present cases was not at all barred or ousted. The learned Court below rightly rejected the aforesaid preliminary objection of the defendants.

The petitions are dismissed but without any order as to costs.

Record of the trial Court be sent back, where the parties through their learned counsel are directed to appear on 14th December, 2006. Since the matter had

already been held up for a sufficiently long time, I direct the learned trial Court to dispose of all the suits very very expeditiously.

10th November, 2006 (V.K.Gupta), C.J.
(C)